IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6197 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHIRUBHAI POPATBHAI TANTI AND ANOTHER
Versus
COLLECTOR, RAJKOT AND OTHERS

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Appearance :
MR AD MITHANI for MR HARIN P RAVAL for the Petitioners
MR SY CHHAYA, ASSISTANT GOVERNMENT PLEADER for Respondent Nos.1, 2 and 4
MR RM CHHAYA for Respondent No.3

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 18/10/2007

ORAL JUDGMENT

1. The petitioners are before this Court being aggrieved by order passed by the Deputy Collector, Rajkot in Fragmentation Case No.2

of 2003 dated 16.03.2004.

2. Heard learned advocate Mr.Amar D.Mithani, for Mr.Harin P.Raval, learned advocate for the petitioners.

3. Learned advocate for the petitioners invited attention of the Court to the observations made by the Deputy Collector in the said order in paragraph No.2. The Deputy Collector has recorded that:

> "The matter was filed on 27.11.2003. On that day, Talati was present and he produced the material in support of the contention that the notices are served. The other side was present and on an adjournment being sought, the matter was adjourned to 18.12.2003. On 18.12.2003, at the request of the respondents (present petitioners), by written application to produce the evidence, the matter was adjourned to 19.01.2004. On that day, neither the evidence was produced nor the respondents (present petitioners) remained present."

As on 19.01.2004 neither the evidence was produced nor the respondents (present petitioners) remained present, the Deputy Collector proceeded with the hearing of the matter in absence of the present petitioners.

4. Learned advocate for the petitioners also invited attention of the Court to Annexure – J, page No.126 – show cause notice dated 22.10.2003, wherein it is stated that:

> "After the receipt of notices, within 10 days, on 10.11.2003 and 27.11.2003 at 11 O'clock, the addressee of the notice

(present petitioners) shall remain present before the authority and represent his case."

5. It is the case of the petitioners that the notice was received two days before the date mentioned, i.e. 27.11.2003 and when they went to the authority, the authority was not available and therefore, the petitioners did not get an opportunity of being heard, as they were not communicated the next date of hearing by the authority.

Besides, it is the case of the present petitioners that the petitioners are not given a similar treatment as is given to other persons, whose cases were also considered under the Prevention of Fragmentation Act.

6. The Court, without going into the second submission and other submissions, decides this matter on the sole point of violation of principles of natural justice.

It is a settled law that an authority must pass an order, more particularly when it is adverse to the party, after affording an opportunity of hearing to the party. In the present case, the petitioners were not heard and the matter was decided against the petitioners by the authority by the order impugned. Only on this short ground, order dated 16.03.2004 in Fragmentation Case No.2 of 2003 is quashed and set aside.

7. At the request of Mr.Satyam Chhaya, learned Assistant Government Pleader, the matter is remitted back to the authority to

decide the same afresh, after giving an opportunity to the petitioners to represent their case.

Taking into consideration the age of litigation, it is deemed fit that the authority be directed to decide the matter as expeditiously as possible, preferably on or before 31.01.2008. Order accordingly.

8. The petition is allowed to the aforesaid extent. Rule is made absolute. No costs. **Direct service** is permitted.

It goes without saying that as and when the authority considers the matter afresh, the authority will give full opportunity to the petitioners and will allow the petitioners to take all contentions available to them under the law.

(RAVI R.TRIPATHI, J.)

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